

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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October 12, 2004

Mario Salinas, Field Investigator
Center for Contract Compliance
PO Box 60561
Bakersfield, CA 93386

Re: Public Works Case No. 2004-003
Cottage Homes Project
Bakersfield Redevelopment Agency

Dear Mr. Salinas:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Cottage Homes Project ("Project") is not a public work subject to the payment of prevailing wages.

Pursuant to a Development and Disposition Agreement entered into in 2003 ("DDA") between the Redevelopment Agency of the City of Bakersfield ("Agency") and Parkview Cottages, LLC ("Parkview"), Parkview agreed to construct 74 single family, low- and moderate-income homes in downtown Bakersfield. Parkview is required to sell 35 of the units to persons whose income does not exceed 80 percent of the area's median income and the remaining 39 units to persons whose income does not exceed 120 percent of the area's median income. Sale of these units is to continue under these restrictions for at least 45 years. Using only monies from its Low- and Moderate-Income Housing Fund pursuant to Health and Safety Code section 33334.3, Agency purchased the 7.4 acre parcel for the Project from the Kern County Board of Education ("Board of Education") for \$1.95 million. Parkview in turn purchased the property from Agency for \$1.00.¹ Otherwise, Parkview is building the Project entirely with privately raised funds.

¹ Agency provided information in support of its position that the fair market price of the property is in fact less than \$1.00 because the affordability restrictions on the property create a negative fair reuse value. The Center For Contract Compliance argues that the fair reuse value is irrelevant to a determination of fair market price. While a determination regarding the fair market price of the property would normally be necessary to determine whether the Project is paid for in whole or in part out of public funds, here such a determination need not be made in light of the finding that the Project is exempt under Labor Code section 1720(c)(4).

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Labor Code section 1720(a)(1) defines "public work" as:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

Labor Code section 1720(b) defines the meaning of "paid for in whole or in part out of public funds."

Labor Code section 1720(c)(4) provides:

(c) Notwithstanding subdivision (b):

* * *

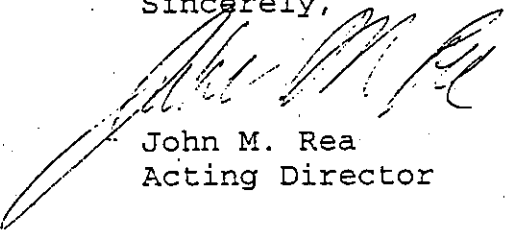
(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of section 33334.2 of the Health and Safety Code that are paid for solely with monies from a Low- and Moderate-Income Housing Fund established pursuant to section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

The Project is construction done under contract. It is not, however, paid for in whole or in part out of public funds. Under Section 1720(c)(4), where the only public funds for the construction of affordable housing units for low- or moderate-income persons paid are from a combination of Low- and Moderate-Income Housing Fund established under the requisite section of the Health and Safety Code and private funds, a project is not paid for with public funds. Here, Agency purchased the property for the Project with the requisite funds and Parkview otherwise used private funds for the construction. Therefore, under Section 1720(c)(4), the Project is not a public work.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director

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